

REMARKS/ARGUMENTS

Claims 1-21 are pending in the application. Claims 1-4, 9, 10, 12, 13 and 15-21 are rejected. Claims 5-8, 11 and 14 are objected to. The rejections will be addressed in turn below. Claim 17 is objected to because of the following informalities: The preamble should match the preamble of the independent claim 1 and is treated as a dependant claim of 13. Appropriate correction is required. Applicant has amended the claim accordingly to correct the informalities. Claims 17, 18 and 21 are rejected under the second paragraph of 35 U.S.C. § 112. Claims 1-5, 9-13, 15-17, and 19-21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Burkhart U.S. Patent Application Publication No. 2002/0011400 A1. Claims 16, 17 and 19-21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Burkhart U.S. Patent Application Publication No. 2002/0011400 A1 in view of Thompson U.S. Patent No. 1,651,912. Claims 5-8, 11 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 17, 18 and 21 stand rejected under 35 U.S.C. § 112, second paragraph as failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the basis for the rejection of claims 17, 18 and 21 is that although the word "means" preceded by the words "displacing means," "conditioning means," and "temperature regulating means," because no function is specified by the words preceding "means," the Office Action asserts that it is impossible to determine the equivalents of the element as required by the sixth paragraph

of 35 U.S.C. § 112. (See 04/26/2010 Office Action, page 3). According to the relevant explanation provided by MPEP § 706.03(d), ¶ 7.34.11, “[i]t is necessary for the words which precede ‘means’ to convey a function to be performed. For example, the phrase ‘latch means’ is definite because the word ‘latch’ conveys the function ‘latching.’ In general, if the phrase can be restated as ‘means for _____,’ and it still makes sense, it is definite. In the above example, ‘latch means’ can be restated as ‘means for latching.’ This is clearly definite. However, if ‘conduit means’ is restated as ‘means for conduiting,’ the phrase makes no sense because the word ‘conduit’ has no functional connotation, and the phrase is indefinite.” Applicant respectfully asserts that just as with “latching means” and “means for latching” in the example provided by MPEP § 706.03(d), ¶ 7.34.11, consistent with the word “latch” and unlike the term “conduit,” the terms “displace,” “condition,” and “regulate” all convey functions to be performed. Applicant’s “displacing means,” “conditioning means,” and “temperature regulating means” included in claims 17, 18 and 21 make sense as specifying functions and thus are definite with respect to the second paragraph of 35 U.S.C. § 112.

Furthermore, “35 U.S.C. 112, sixth paragraph states that a claim limitation expressed in means-plus-function language ‘shall be construed to cover the corresponding structure described in the specification and equivalents thereof.’” MPEP § 2181 quoting 35 U.S.C. 112. “If one employs means plus function language in a claim, one must set forth in the specification an adequate disclosure showing what is meant by that language.” Id, quoting *In re Donaldson Co.*, 16 F.3d 1189, 1195, 29 USPQ2d 1845, 1850 (Fed. Cir. 1994) (en banc). “If an

applicant fails to set forth an adequate disclosure, the applicant has in effect failed to particularly point out and distinctly claim the invention as required by the second paragraph of section 112." Id. "The proper test for meeting the definiteness requirement is that the corresponding structure (or material or acts) of a means (or step)-plus-function limitation must be disclosed in the specification itself in a way that one skilled in the art will understand what structure (or material or acts) will perform the recited function." Id., quoting Atmel Corp. v. Information Storage Devices, Inc., 198 F.3d 1374, 1381, 53 USPQ2d 1225, 1230 (Fed. Cir. 1999). Applicant respectfully asserts that adequate disclosure exists in Applicant's specification showing what is meant by the "means plus function" language provided in claims 17, 18 and 21, and no evidence has been presented to the contrary. Therefore, on the basis of the above remarks, Applicant respectfully asserts that claims 17, 18 and 21 satisfy the requirements of 35 U.S.C. § 112, second paragraph, and thus Applicant respectfully requests that the rejections be withdrawn.

According to the 04/26/2010 Office Action, claims 5 - 8, 11 and 14 are objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. (See 04/26/2010 Office Action, page 6). Applicant has accordingly incorporated the allowable limitations of claim 5, now cancelled, into independent claim 1 and dependent claims 2 - 12 have been amended in an appropriate manner to depend upon allowable independent claim 1, either directly or indirectly. Furthermore, the limitations of allowable claim 14, in addition to those of

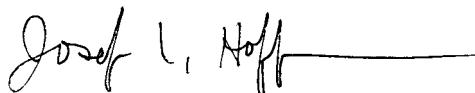
intervening claim 13 have been incorporated into the limitations of independent claim 1 and presented as new independent claim 22, and dependent claims 15 - 21 have been amended in an appropriate manner to depend upon allowable independent claim 22, either directly or indirectly. Claims 13 and 14 have thus been cancelled. Therefore, on the basis of the foregoing, Applicant respectfully asserts that claims 1 - 4, 6 - 12 and 15 - 22 are in a condition for allowance, and courteously and respectfully requests the same.

Conclusion

If any issues remain that may be expeditiously addressed in a telephone interview, the Examiner is encouraged to telephone the undersigned at 515/558-0200.

All fees or extensions of time believed to be due in connection with this response are attached hereto; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account 50-2098.

Respectfully submitted,



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